IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Crl.Rev.Pet.No. 471 of 2000()

CRA.106/1998 of SESSIONS COURT, THRISSUR
CC.140/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONERS:APPELLANTS/ACCUSED

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1. ANIPRASAD, S/O.BALAN
   PANIYATH HOUSE, KARATH PARAMBU
   THIRUVENKITAM.

2. JAYADEVAN @ DINU, S/O.BALAN
   PANIYATH HOUSE, KARATH PARAMBU
   THIRUVENKITAM.

BY ADV. SRI.T.A.SHAJI
SRI.M.A.ASIF

RESPONDENT: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.
(REPRESENTING THE S.I. OF POLICE, GURUVAYUR)

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.471/2000

ORDER ON CRL.M.P.NO.2675/2000 IN CRL.R.P.NO.471/2000

DISMISSED

25.9.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.471 of 2000

Dated this the 25th day of September, 2007

O R D E R

The revision petitioners are the accused in C.C.No.140/96 in the file of Judicial First Class Magistrate Court, Chavakkad with respect to the offences under Sections 324 and 326 read with Section 34 IPC and stands convicted and sentenced as modified by the appellate court to undergo R.I. for a period of three months each and to pay a fine of Rs.2,500/- each with respect to the offence under Section 324 read with Section 34 IPC, R.I. for six months and to pay a fine of Rs.5,000/- each with respect to the offence under Section 326 read with Section 34 IPC and in default, to undergo imprisonment for a period of two months and four months respectively.

2. The prosecution case is that on 1.1.1996 at about 6.05 p.m., the accused/revision petitioners attacked PWs' 2 and 3, A1 with a chopper and A2 with an iron rod at the road in front of the house of PW1, the sister of PWs' 2 and 3.

3. The prosecution evidence consisted of the testimony

of PWs' 1 to 8, Exts. P1 to P6 and MOs' I and II.

4. PW1, the sister of PWs' 2 and 3 who rendered the FIS i.e., Ext. P1 and PWs' 2 and 3, the injured have testified with respect to the incident. MOS' I and II, the chopper and iron road were recovered as per Ext. P3 seizure mahazar in pursuance of Ext. P3(a) confession statement of A1 by PW7, the Circle Inspector and the same was witnessed by PW5, the attestor to Ext. P3. PW7, the Circle Inspector and PW5, the witness have testified as to the recovery. PW7, the Circle Inspector has proved Ext. P3(a) portion of the confession statement admissible under Section 27 of the Evidence Act. PWs' 1 to 3 have identified MOs' I and II. The evidence of PWs' 5 and 7 in this regard stands unimpeached.

5. It is the version of PW1 that at the time when PWs' 2 and 3 had just gone out of her house and she was standing outside watching PWs' 2 and 3 leaving the place, she saw the accused holding the above weapons running towards PWs' 2 and 3 and assaulting PWs' 2 and 3. A1 and A2 coming from the back of PWs' 2 and 3 inflicted the injuries, A1 with the chopper and A2 with the iron rod. PWs' 2 and 3 were admitted in Tahani

Hospital, Guruvayur and PW1 has also proved Ext. P1 FI statement rendered by her from at the hospital in the same day at 8.30 p.m. PWs' 2 and 3, the injured, have testified as to the incident corroborating the version of PW1. No contradictions or omissions were brought out with respect to Section 161 of Crl.P.C. statement of the above witnesses.

6. The injuries sustained by PW2 as proved by PW6, CMO of Tahani Hospital, Guruvayur are as follows:

(i) incised wound 2 in number on the posterior aspect of right knee 6x1x1 cm size and 4x1x1 cm size muscles are injured.

(ii) incised wound behind right knee each 1x2 cm. in size-bones exposed.

(iii) incised wound left side of scalp 4x1 cm.

(iv) incised wound right side of scalp 4x1 cm.

(v) 2 incised wounds on the left leg 1x1 cm and 1x2 cms. X-ray skull depressed fracture right side. Fracture neck of fibula.

As noted in Ext. P4 wound certificate injury sustained by PW2 recorded in Ext. P5 by PW6 the doctor are the following :

(i) incised wound 4x1x1/2 cm. on the left side of scalp.

(ii) incised wound 2x1 cm. on right side of back of scalp.

7. The contention of the revision petitioners is that no independent witnesses were examined despite the fact that the incident has taken place in a road and there were other adjacent houses. I find that the matter was considered by the lower appellate court and the contention was discarded in view of the fact PW1 has stated that others came to the spot only subsequently. The court below has also considered the contention that PW1 has stated that she signed in the papers brought by the police on 2.1.1996 and that she has not signed in any other papers. In view of the fact that FIR and FIS had reached the court on the next day at 8.30 a.m. the above contention was rejected. It is also to be noted that PW8, the Sub Inspector who recorded the FIS and registered the crime was not specifically asked about the statement of PW1. The other contention raised is that in the wound certificate the names of the accused are not mentioned and that it is mentioned that the accused was brought by friends. I find that the above has nothing to do with the incident as such. In the circumstances, I find no reason to deviate from the concurrent findings of the

courts below with respect to the conviction of the accused. The conviction is confirmed.

8. Counsel for the revision petitioner has pleaded for leniency pointing out that the accused at the time of the incident were aged only 19 and 20 respectively and that more than 10 years have elapsed since the commencement of the proceedings.

9. In the circumstances, the sentence imposed for the offence under Section 324 IPC is modified to imprisonment till the rising of the court and to remit a compensation of Rs.50,000/- each and in default, to undergo simple imprisonment for ten months each. The compensation amount, if realised, Rs.85,000/- shall be paid to PW2 and Rs.15,000/- to PW3. The revision petitioners are granted six months' time to remit the compensation amount. They shall appear before the Judicial First Class Magistrate Court, Chavakkad on 25.3.2008 to receive the sentence.

The criminal revision petitioner is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl